

from respondent's ~~factum~~ - re "degradation"

- 10 -

"dehumanization"

21. In R. v. Doug Rankine Co., Ontario County Court Judge Borins had the following to say on this issue:

Several of the films have scenes which couple violence and cruelty with sex. These scenes, such as scenes of bondage, frequently involve men perpetrating indignities on women in a sexual context. In my opinion many of the films are exploitive of women, portraying them as passive victims who derive limitless pleasure from inflicted pain and from subjugation to acts of violence, humiliation and degradation. Women are depicted as sexual objects whose only redeeming features are their genital and erotic zones, which are predominantly displayed in clinical detail. Whether deliberately or otherwise, most of the films portray degradation, humiliation, victimization and violence in human relationships as normal and acceptable behaviour.

R. v. Doug Rankine Co. (1983), 36 C.R. (3d) 154 (Ont. Co. Ct.)

22. Subsequently, in R. v. Ramsingh, Justice Ferg of the Manitoba Court of Queen's Bench adopted Judge Borins' reasoning, and added the following:

The films . . . portray women in a most degrading way. They are exploited, portrayed as desiring pleasure from pain, by being humiliated and treated only as an object of male domination sexually, or in cruel or violent bondage. Women are portrayed in these films as pining away their lives waiting for a huge male penis to come along, on the person of a so-called sex therapist, or window washer, supposedly to transport them into complete sexual ecstasy. Or even more false and degrading one is led to believe their reason d'etre is to savour semen as a life elixir, or that they secretly desire to be forcefully taken by a male.

. . . As well, I think that where violence is portrayed with sex, or where there are people, particularly women, subjected to anything which degrades or dehumanizes them, the community standard is exceeded . . .

R. v. Ramsingh (1984), 14 C.C.C. (3d) 230 (Man. Q.B.) at pp. 239-240

23. Justice Shannon of Alberta's Court of Queen's Bench also considered degrading and dehumanizing material in R. v. Wagner:

In sexually explicit pornography that is free of violence, but is degrading or dehumanizing, men and women are often verbally abused and portrayed as having animal characteristics. Women, particularly, are deprived of unique human character or identity and are depicted as sexual playthings, hysterically and instantly responsive to male sexual demands. They worship male genitals and their own value depends upon the quality of their genitals and breasts. Thus in such films professional women, such as nurses and secretaries, are hired solely for the purpose of sexual gratification, without regard for their professional qualifications and abilities.

On the other hand, sexually explicit erotica portrays positive and affectionate human sexual interaction, between consenting individuals participating on a basis of equality. There is no aggression, force, rape, torture, verbal abuse or portrayal of humans as animals.

R. v. Wagner (1985), 43 C.R. (3d) 318 (Alta. Q.B.) at p. 331; appeal dismissed (1986), 50 C.R. (3d) 175 (Alta. C.A.)

24. In R. v. Red Hot Video Chief Justice Nemetz of the British Columbia Court of Appeal agreed with Shannon J., and found that "... such unduly exploitative films, even if devoid of acts of violence, degrade men and women by portraying them as having animal characteristics . . . this type of degrading vilification of women is unacceptable by any reasonable Canadian community standard." He concluded that the Criminal Code provision was demonstrably justified since "... the undue sexual exploitation of women

and children depicted in certain publications and films can, in certain circumstances, lead to abject and servile victimization."

R. v. Red Hot Video (1985), 45 C.R. (3d) 36 (B.C.C.A.) at pp. 43-44

25. The Supreme Court of Canada had an opportunity to deal with this issue in Towne Cinema Theatres Ltd. v. R.:

Sex-related publications which portray persons in a degrading manner as objects of violence, cruelty or other forms of dehumanizing treatment may be "undue" for the purpose of [s. 163(8)]. No one should be subject to the degradation and humiliation inherent in publications which link sex with violence, cruelty, and other forms of dehumanizing treatment. It is not likely that at a given moment in a society's history such publications will be tolerated.

Towne Cinema Theatres Ltd. v. R. (1985), 45 C.R. (3d) 1 (S.C.C.) per Dickson C.J.C. at p. 14

26. In the same case, Madam Justice Wilson had the following to say:

It seems to me that the undue exploitation of sex at which [s. 163(8)] is aimed is the treatment of sex which in some fundamental way dehumanizes the persons portrayed and, as a consequence, the viewers themselves. There is nothing wrong in the treatment of sex *per se* but there may be something wrong in the manner of its treatments. It may be presented brutally, salaciously and in a degrading manner, and would thus be dehumanizing and intolerable not only to the individuals or groups who are victimized by it but to society at large. On the other hand, it may be presented in a way which harms no one, in that it depicts nothing more than non-violent sexual activity in a manner which neither degrades nor dehumanizes any particular

individuals or groups. It is this line between the mere portrayal of human sexual acts and the dehumanization of people that must be reflected in the definition of "undueness".

... The problem is that we know so little of the consequences we are seeking to avoid. Do obscene movies spawn immoral conduct? Do they degrade women? Do they promote violence? The most that can be said, I think, is that the public has concluded that exposure to material which degrades the human dimensions of life to a subhuman or merely physical dimension and thereby contributes to a process of moral desensitization must be harmful in some way.

Towne Cinema, supra, per Wilson J. at pp. 29-30

27. In Butler the Supreme Court, in the course of reviewing general principles of the law on obscenity, stated that:

... It is the standards of the community as a whole which must be considered and not the standards of a small segment of that community such as the university community where a film was shown ... or a city where a picture was exposed ... The standard to be applied is a national one.

Butler, supra, per Sopinka J. at p. 22

28. It is submitted that, although research on the effects of pornography has focused on heterosexual material and its impact on women and children, it can reasonably be assumed that what is degrading or dehumanizing in the heterosexual context will also be degrading or dehumanizing among homosexuals.

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